The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal and Civil Justice Appropriations Committee

BILL:	PCS/SB 1400 (667262)
INTRODUCER:	Criminal and Civil Justice Appropriations Committee
SUBJECT:	Judicial System
DATE:	March 17, 2010
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Sadberry	JA	**Pre-meeting**
2.			WPSC	
3.			RC	
4.				
5.				
6.				

I. Summary:

The bill makes conforming changes to the Florida Statutes necessary to implement the Senate budget in the civil and criminal justice area. The bill contains provisions to clarify existing law relating to fees and revenues used in the Senate budget. The bill also contains various revisions prompted by the Senate's request that criminal and civil justice entities propose improvements to their operations that will reduce costs and improve their performance of their official duties. Unless otherwise expressly provided, the bill has an effective date of July 1, 2010.

This bill substantially amends the following sections of the Florida Statutes: 25.241, 25.3844, 25.386, 27.366, 27.40, 27.245, 27.511, 27.52, 27.5304, 28.24, 28.241, 28.36, 29.001, 29.008, 29.0195, 34.041, 35.22, 39.0134, 39.821, 57.082, 316.192, 320.02, 320.061, 320.131, 320.38, 322.03, 322.16, 394.4599, 394.4615, 394.4655, 394.467, 775.082, 775.083, 775.0843, 938.06, 939.08, 939.185, 943.03, 943.053, and 943.0585.

This bill creates section 27.5305 of the Florida Statutes.

This bill repeals the following sections of the Florida Statutes: 29.0095, 775.0841, 775.087(5), and 985.557(4).

II. Present Situation:

State Judicial System

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. Under Revision 7 to Article V, the counties continue to fund the cost of facilities, security, and communications, including

information technology for the trial courts, state attorneys, and public defenders. The state paid for the due process costs of these entities, including the cost of court appointed counsel for certain persons in criminal and civil matters. Funds for due process costs are appropriated to the Justice Administrative Commission, the department that administratively houses state attorneys, public defenders, and other court related entities. To assist the counties in funding the cost of one of their remaining responsibilities, information technology, the Legislature authorized an additional fee on the recording of documents to be collected by the clerk of court and retained locally.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings. The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. Appellate filing fees are deposited into the General Revenue Fund and the state courts Operating Trust Fund. The 2009 Legislature established a new budgeting procedure for the clerks of court based on unit costs to be implemented in the 2010-11 fiscal year. The fiscal year 2009-10 statewide appropriation for the clerks is 451.4 $ million.

Criminal and Civil Conflict Regional Counsels (Regional Conflict Counsels)

The 2007 Legislature created five regional conflict counsels to take criminal cases that the public defender could not take due to ethical conflicts and certain other civil cases for indigent persons entitled to representation by law. Civil cases include providing legal representation to indigent parents in dependency and termination of parental rights. The 2008 legislature created a $50 indigency application fee for persons needing the assistance of the regional conflict counsels for representation in dependency and termination of parental rights proceedings. These funds are used to support the operations of the regional conflict counsels. The regional conflict counsels are defined as "public defenders" for the purpose of specifying county funding responsibilities. In addition, the regional conflict counsels were added to the list of entities that benefit for the county funding for the information technology needs of entities in the judicial system.

Several counties and the Florida Association of Counties have filed a lawsuit challenging the law that established the regional conflict counsels and required the counties to support them as the other local judicial system entities. The counties were successful in the 2nd Circuit and in the 1st District Court of Appeals. The case in currently under consideration by the State Supreme Court.

Section 57.082, F.S., requires indigent persons receiving legal representation in dependency proceedings (chapter 39) to pay a $50 application fee to the clerk. Such fees are to be sent to the Department of Revenue for deposit in the Indigent Civil Defense Trust Fund to support the operations of the regional conflict counsels.

Court Appointed Counsel

Prior to July 1, 2007, all criminal conflict cases and certain civil cases were handled exclusively by private, court appointed counsel. While the Legislature created the regional conflict counsels to take most of these cases, if the regional conflict counsels have an ethical conflict, the case must be handled by private, court appointed attorneys. The chief judge in each circuit maintains

a registry of qualified attorneys and these attorneys sign a contract with the Justice Administrative Commission to receive payment based on a flat fee. The Legislature appropriated $8.7 million to the Justice Administrative Commission for court appointed counsel for criminal conflict cases and $5.5 million for civil conflict cases in the 2009-10 fiscal year. The Legislature also appropriated $5.4 million to a contingency fund in the event that appropriations for criminal and civil conflict cases were not sufficient. The Legislative Budget Commission distributed the contingency funds to pay for criminal and civil conflict cases December 9, 2009. The Legislative Budget Commission again had to provide additional funding for criminal and civil conflict cases on February 18, 2010. Costs of court appointed counsel for providing legal representation for criminal and civil conflict cases have exceeded original appropriations for several years. The Legislature is prevented from accurately estimating and planning for these expenditures for two reasons. One reason is that court appointed counsel sign a generic contract with the Justice Administrative Commission to take certain types of cases. When assigned a case, the contract requires the attorney to notify the JAC, but in many cases attorneys do not. Second, even though the contract requires the attorney to timely bill the JAC, some attorneys submit bills several years after the case has been closed. For example, the JAC as recently as March, 2010 was still receiving bills for cases closed in calendar year 2004. Current law allows for the imposition of a 15% penalty for bills submitted more than 90 days after the case is closed.

Court appointed counsel are paid a flat fee based on the type of case. If a court finds that the case warrants a fee in excess of the flat fee, the court may double the amount. If that is still not sufficient, the court may order the Justice Administrative Commission (JAC) to pay the attorney an hourly amount. But in these cases, the attorney must make notes that allow the JAC to determine the amount of time spent on the case. The JAC has received hourly billings from individual attorneys that exceeded 24 hours in one day. The JAC has challenged these bills.

Court appointed counsel are paid a flat fee for their attorney services and the state pays for any due process costs, such as court reporting for depositions and transcripts of court proceedings, medical experts, and other services. These due process providers are chosen by the court appointed attorneys and are reimbursed directly by the JAC with the approval of the attorney.

Indigent For Costs

In some cases, criminal defendants can afford attorney fees, but cannot afford the cost of due process services such as court reporting, medical experts, investigators, etc. The Legislature has paid these costs since 2004 and in 2007 codified the program in s. 27.52(5), F.S. According to the JAC, the amount spent on indigent for costs has grown from $936,446 in fiscal year 2004-05 to $2,119,220 in 2008-09. In addition, the costs are not proportional to the number of criminal cases in each judicial circuit. For example, in 2007-08, a total of $499,292 was spent in the 17th circuit while a much larger circuit, the 11th circuit, spent $294,265. Finally, private attorneys spend more on due process costs per case for person declared indigent for costs than the public defenders spend on due process for their cases. The public defender's due process costs are budgeted in the JAC and public defenders have not overspent the appropriation since the state took over these costs from the counties in 2004. There may not be a similar incentive for private attorneys to control due process rates for indigent for cost cases.

Reporting Requirements

The state court system, the state attorney, and the public defenders must report on certain financial expenditures. The state court system, the state attorney, and the public defenders state that preparing these reports is labor intensive and the reports are duplicative of the requirements of the Transparency Florida Act (2009-74, Laws of Florida) passed by the 2009 Legislature.

In certain criminal prosecutions, if mandatory or enhanced sentences are not pursued, the state attorney must document why that decision was made and, in some instances, report those decisions. For example, current law sets forth the legislative intent that defendants who are eligible for enhanced minimum mandatory sentences under subsections 775.087(2) and (3), F.S., commonly known as the "10-20-Life" law, receive those sentences.[1] Current law also requires that prosecutors write memoranda for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law but did not receive the sentence. The memorandum must explain the sentencing deviation.[2] In addition to keeping the memorandum in the defendant's file, it is to be submitted quarterly to the Legislature and the Governor with a copy being retained for 10 years by the Florida Prosecuting Attorneys Association, Inc. (FPAA), and made available to the public upon request.[3]

The same statutory requirement of a sentencing deviation memorandum to the case file and the FPAA exists in cases in which the defendant meets the criteria for being sentenced as a "prison releasee reoffender" under s. 775.082(9), F.S. In those cases, the memoranda are forwarded from the prosecutors to the FPAA on an annual basis.[4] The FPAA must also retain these records for 10 years and make these documents available to the public.

Current law requires state attorneys to adopt criteria to be used by the state attorney's office when deciding whether to pursue the enhanced sanctions provided in s. 775.084(4), F.S., for defendants who meet the statutory criteria for sentencing as "habitual felony offenders" and "habitual violent felony offenders."[5] The statute specifies that the criteria be designed to ensure fair and impartial application of those sentencing enhancements. Deviations from the criteria are to be memorialized for the case files.[6]

Current law requires the state attorneys to develop policies and guidelines for filing juvenile cases in adult court.[7] It further requires that the state attorneys submit these policies and guidelines to the Legislature and the Governor no later than January 1 of each year.[8]

[1] Section 27.366, F.S.; *see also* s. 775.084(5), F.S.
[2] Section 775.084(5), F.S.
[3] Section 27.366, F.S.
[4] Section 775.082(9)(d)2., F.S.
[5] Section 775.08401, F.S. The criteria for designation as a "habitual felony offender" and a "habitual violent felony offender" are set forth in s. 775.084(1)(a) and (b), F.S.
[6] Section 775.08401(3), F.S.
[7] Section 985.557(4), F.S.
[8] *Id.*

Judicial Enforcement of Traffic Laws

Section 316.192(1), F. S., provides that operating a motor vehicle in willful or wanton disregard for the safety of people or property, or who flees a law enforcement officer in a motor vehicle, commits the act of reckless driving. A first offense is punishable by up to 90 days in jail and a fine of not less than $25 nor more than $100. A second offense of reckless driving is punishable by up to 6 months in jail and a fine of not less than $50 nor more than $500.

Section 320.02, F.S., requires that all motor vehicles that operate on the roads of this state be registered with the Department of Highway Safety and Motor Vehicles (DHSMV). Failure to comply with registration requirements could lead to the immobilization of a vehicle until compliance is demonstrated. When a motor vehicle owner changes his or her place of residence he or she has 20 days within which to notify the DHSMV, in writing, of a change of address. There are a few exceptions to the general registration requirements explained below.

Section 320.061, F.S., punishes altering a license plate as a second degree misdemeanor. This act includes any kind of defacement or any attached material on or around the license plate that interferes with visibility or legibility. A second degree misdemeanor is punishable by up to 60 days in jail, 6 months probation, and a $500 fine.

Section 320.131, F.S., authorizes the DHSMV to design, issue and regulate the use of temporary tags. Any person or corporation who unlawfully issues or uses a temporary tag commits a second degree misdemeanor. One exception is in cases where the tag has been expired for 7 days or less which is punishable as a noncriminal infraction punishable as a nonmoving violation.

Section 320.37, F.S., provides, generally, that nonresidents of the state do not need to register their motor vehicles with the DHSMV so long as they comply with the registration requirements of their home state. As set forth in s. 320.38, F.S., this exemption from the registration requirement does not apply, however, if that nonresident accepts employment or engages in a profession, trade or occupation, or if the nonresident enters his or her children in the public school system. Such person then must register his or her motor vehicle within 10 days. This requirement does not apply to migrant or seasonal farm workers or university students.

The DHSMV regulates the licensure of people to drive on the roadways of the state. Section 322.03(1)(a), F.S., provides that in order for a person to receive a commercial driver's license, he or she must surrender any such licenses acquired in other states, which is punishable as a first degree misdemeanor. A first degree misdemeanor carries the potential penalties of up to a year in jail, 1 year of probation, and $1,000 fine. It is a second degree misdemeanor (see s. 322.39, F.S.) violation of s. 322.03(5) for a person to drive if his or her license has been expired for more than 4 months.

Section 322.16, F.S., authorizes DHSMV to impose conditions upon a person's driving including requiring certain mechanical control devices and driver improvement, or restricting the time, place and purpose of the use of a motor vehicle. Violations of these conditions are punishable as second degree misdemeanor offenses.

Baker Act

The Florida Mental Health Act, better known as the Baker Act, creates a system of rights for persons with mental illnesses as well as their due process rights when held in mental health facilities. An involuntary Baker Act commitment occurs when a person is taken to a receiving facility for involuntary examination when there is reason to believe that he or she is mentally ill and because of his or her mental illness, the person has refused voluntary examination; the person is unable to determine for himself or herself whether examination is necessary and without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself and such refusal could pose a threat of harm to his or her well being; and there is a substantial likelihood that without care or treatment, the person will cause serious bodily harm to himself, herself or others in the near future as evidenced by recent behavior. The state attorney represents the state in Baker Act hearings before the court, but has no substantive role.

Expungement of Criminal Records

Section 943.0585, F.S., sets forth the procedure a person must follow in order to petition a court for expungement of his or her criminal record. Under current law the applicant for expungement must request a Certificate of Eligibility from the Florida Department of Law Enforcement (FDLE) which must accompany the Petition filed with the court. Part of what the applicant must send FDLE, in order to show that he or she qualifies for expungement, is written, certified documentation from the appropriate state attorney or statewide prosecutor stating that:

- an indictment, information, or other charging document was not filed or issued in the case.
- an indictment, information, or other charging document, if filed or issued in the case, was dismissed or nolle prosequi by the state attorney or statewide prosecutor, or was dismissed by a court of competent jurisdiction, and that none of the charges related to the arrest or alleged criminal activity to which the petition to expunge pertains resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt.

the criminal history record does not relate to a violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation enumerated in s. 907.041, or any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, where the defendant was found guilty of, or pled guilty or nolo contendere to any such offense, or that the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, such an offense as a delinquent act, without regard to whether adjudication was withheld.

III. Effect of Proposed Changes:

Section 1 amends s. 25.241(5), F.S., to direct $50 of the Supreme Court filing fee to the State Courts Revenue Trust Fund. This change is necessitated by the creation in 2009 of the State

Courts Revenue Trust Fund. In addition, the bill revises this section so that such funds can be used to fund the operations of the court rather than only court improvement projects.

Section 2 amends s. 25.3844, F.S., to rename the Operating Trust Fund in the state court system to the Administrative Trust Fund. This change is necessitated by the creation in 2009 of the State Courts Revenue Trust Fund that took the place of the Operating Trust Fund.

Section 3 amends s. 25.386, F.S., to direct the fees charged by the Supreme Court for the certification of court interpreters to the Administrative Trust Fund.

Section 4 amends s. 27.366, F.S., to eliminate the requirement that prosecutors write an explanation for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law, but did not receive the sentence. Such information will continue to be maintained in the offices of the 20 state attorneys.

Section 5 amends s. 27.40(7), F.S., to require court appointed counsel to maintain records to ensure the redaction of privileged information so that the Justice Administrative Commission (JAC) can inspect such records relating to the state's payment of legal services performed. If the attorney refuses to allow the JAC to review such documents, he or she waives the right to compensation in excess of the established flat fee. When the JAC finds that the attorney waives this right, it is presumed by the court to be valid unless the commission's finding is not supported by competent evidence. This will allow the JAC to better review and challenge attorney billings to the state when the court allows compensation beyond the flat fees established in law.

Section 6 amends s. 27.425, F.S., to eliminate the requirement that the chief judge in each circuit recommend due process rates to the Legislature and instead requires due process rates to be set annually in the General Appropriations Act. The amendments allow the JAC to develop forms for procurement of due process provider services.

Section 7 amends s. 27.511(5) and (6), F.S., to authorize regional conflict counsels to take rule 3.800 and 3.850 cases. Such cases relate to post conviction complaints against a person's attorney. Such cases were included in the funding calculations for the regional conflict counsels in 2007, but it is not clear in current law that regional conflict counsels can take such cases. Paragraph (6) is amended to clarify that regional conflict counsels can take termination of parental rights cases under ch. 63 and that private court appointed counsel is to take parental notice of abortion cases where minors receive legal representation in gaining court permission to undergo abortion services without parental consent. If no qualified court appointed counsel is available, the regional conflict counsels can provide such representation.

Section 8 amends s. 27.52, F.S., relating to qualifying for indigency for a public defender or for indigent for costs. The changes require the clerk of court to make a search of property records and motor vehicle title records for a more accurate determination of indigency. The standards of indigency are maintained as well as the opportunity for the person to appeal the clerk's determination to the court. Revisions are made to the indigent for costs program to better control costs. Defendants, or more likely their attorneys, must make a written motion to the court to be declared indigent for costs and provide a copy to the JAC. The statute is further amended to presume that the person is not indigent for costs if the person's private attorney fee was more

than $5,000 for a noncapital criminal case. Otherwise, the applicant must show clear and convincing evidence that the fees paid are reasonable based on the case and that they should be declared indigent for costs. Current law is continued so that a person declared indigent for costs cannot have attorney fees paid by the state. Due process costs for persons declared indigent for costs can only be paid by the JAC and payment must be at the established state rates. If a person determined indigent for costs is found guilty, a lien is established for the repayment of costs paid by the state. This will allow the state to be reimbursed for due process costs paid at a later time when the person is no longer indigent.

Section 9 amends s. 27.5304, F.S., to assess additional penalties on court appointed counsel who are late in their billings to the JAC. Current law allows for the imposition of a 15% penalty for court appointed counsel bills submitted more than 90 days after the case is closed. Revisions to the statute would allow for a 50% penalty for bills submitted more than 1 year after the case is closed and 75% for bills submitted more than 2 year after the case is closed.

Section 10 creates s. 27.5305, F.S., to provide additional requirements for compensation of court appointed counsel. Effective January 1, 2011, court appointed counsel and due process providers must receive the payment from the JAC through electronic funds transfer. The JAC may exempt providers when this requirement creates a hardship. The new section allows for the payment for only one original transcript, and specifies that rates for court reporters and private investigators will be set annually in the General Appropriations Act. Further, court appointed counsel must receive authorization from the court to hire out of state expert witnesses and mitigation specialists. The court order granting permission to use out of state experts must be in writing and explain that no qualified expert was available in state. The new section also provides a right to discovery for the JAC prior to any hearing over court orders to pay attorney fees and costs above the state set flat fee and associated due process rates.

Section 11 amends s. 28.24(12), F.S., to clarify that the recording fee authorized to fund the information technology needs of the local court system entities can, at the Board of County Commission's discretion, be used to benefit the regional conflict counsels. Even though the bill no longer requires the counties to fund the information technology needs of the regional conflict counsel, there may be circumstances when information technology projects are implemented to improve the local court system and it will be to the county's advantage to provide these improvements to the regional conflict counsels. This change will allow counties to use the revenue for these improvements on the regional conflict counsels.

Section 12 amends s. 28.241(1) (a) and (7), F.S., to clarify that the increase of the circuit filing fee made by chapters 2009-61 and 2009-204, Laws of Florida, was not to apply to any case types for which a filing fee is otherwise prohibited by law. These laws passed by the 2009 Legislature raised filing fees to improve court funding and contained language to exempt cases in the family law area. Due to the drafting of these provisions, some clerks of court interpreted these changes to require to collection of filing fees on domestic violence injunctions which other state law and federal law prohibit such a fee.

Section 13 amends s. 28.36(10), F.S., to conform the statutes specifying the budgeting process of the clerk of courts to the Senate budget. For the 2010-11 state fiscal year, the total amount of the 67 clerks budgets cannot exceed the amount specified in the General Appropriations Act. The

Clerk of Courts Operations Corporation will determine the amount for each of the 67 clerks and the clerks will receive a monthly distribution from the Clerk of Courts Trust Fund within the Justice Administrative Commission. The implementation of unit cost budgeting for the clerks required under this statute is delayed until state fiscal year 2011-12.

Section 14 amends s. 29.001(1), F.S. , to strike the reference to the regional conflict counsels as part of the constitutional definition of the elements of the state court system. The regional conflict counsels however, continue to be listed in this statute as state court system elements that are state funded.

Section 15 amends s. 29.008, F.S., relating to county funding responsibilities for the state court system to strike the regional conflict counsels from the definition of the public defenders. This change should resolve the current lawsuit in which counties contend that because the regional conflict counsels are neither public defenders nor specified in the Florida Constitution, the counties have no obligation to provide them with facilities, security, and communication services. The reference to the regional conflict counsels is also stuck from the list of entities that the chief judge must consult with in determining any local requirements of the county. Local requirements are those programs and services that are optional to the county and are considered local elements rather than state elements of the court system. Local elements must be funded by the county under Revision 7 to Article V of the Florida Constitution.

Section 16 repeals s. 29.005, F.S., requiring expenditure reports from the 20 chief judges, state attorneys, and public defenders on items specified as elements of the state court system to be funded by state revenues. This report is duplicative of the information required under the Transparency Florida Act (2009-74, Laws of Florida).

Section 17 amends s. 29.0195, F.S., to change the reference to the state courts' Operating Trust Fund to the Administrative Trust Fund in regards to the deposit of funds collected by the courts for the cost of court reporting and interpreting services provided to non-state entities.

Section 18 amends s. 34.041(1)(a), F.S., to clarify that the filing fee for small claims less than $1,000 that are made at the same time as a request for a replevin action to recover property be limited to $125. The combination filing fee was created by the 2009 Legislature (see section 7 of Chapter 2009-61, Laws of Florida). Some clerks of court have interpreted the 2009 change as requiring a person to pay both the new combination filing fee of $125 as well as the filing fee of $170 for small claims more than $500 and less than $2,500.

Section 19 amends s. 35.22(6), F.S., to direct that $50 of the District Courts of Appeal filing fee be deposited in the State Courts Revenue Trust Fund, rather than the Operating Trust Fund. The bill renames the existing Operating Trust Fund the Administrative Trust Fund. This part of the appellate filing fee is more appropriately deposited in the State Courts Revenue Trust Fund. Similar to the change in the Supreme Court Filing Fee statute, this statute is amended to specify that the $50 of the District Courts of Appeal filing fee is for court operations, not just "improvement projects".

Section 20 amends s. 39.0134, F.S., to clarify that the $50 civil indigency application fee created in 2008 to cover costs associated with the regional conflict counsels providing legal

representation to indigent parents in dependency proceedings and termination of parental rights cases is mandatory and that the fee be assessed by the court and collected by the clerk. The fee continues to be deposited in the Indigent Civil Defense Trust Fund to be available for appropriations to the regional conflict counsels.

Section 21 amends s. 39.821(1), F.S., relating to the qualifications of guardians ad litem. The revision requires all guardian ad litem staff and volunteers to undergo a level 2 background screening which searches the national criminal history information maintained by the Federal Bureau of Investigation. Currently, guardian ad litem staff and volunteers undergo a level 1 background screening which searches the Florida criminal history information maintained by the Department of Law Enforcement.

Section 22 amends s. 57.082(1) and (5), F.S., relating to civil indigency to clarify that an indigent person receiving state funded legal representation for representation from the regional conflict counsel or a court appointed attorney during dependency or termination of parental rights proceedings must pay the $50 application fee for civil indigency. This is required when the case is opened, re-opened, or appealed. An indigent person cannot however be refused counsel if the fee is unpaid. If the fee is not paid the person will still receive state paid legal representation, but the clerk will enroll them in a payment plan.

Section 23 amends s. 316.192(2), F.S., to increase the minimum fine for a first conviction of reckless driving from $25 to $100 and from $50 to $200 for a second violation. The amount of these traffic penalties were last set by the Legislature in 1971. Reckless driving continues to be a misdemeanor under the bill.

Section 24 amends s. 320.02(4), F.S., effective October 1, 2010, motor vehicle owners are given 60 days rather than the current 20 days to notify the Department of Highway Safety and Motor Vehicles (HSMV) of a change of address under the registration of vehicles requirements.

Section 25 amends s. 320.061, F.S., effective October 1, 2010, the alteration of a vehicle tag is punished as a moving violation which is a noncriminal traffic infraction.

Section 26 amends s. 320.131(3), F.S., effective October 1, 2010, the unlawful use of a temporary tag is cited as a moving violation while the offense of unlawfully issuing a temporary tag remains a second degree misdemeanor.

Section 27 amends s. 320.38, F.S., effective October 1, 2010, nonresidents who accept work or enter their children in school in Florida public schools are given 60 days to register the nonresident's vehicle with HSMV, rather than the current 10 days.

Section 28 amends s. 322.03, F.S., effective October 1, 2010, to continue to punish making a false affidavit regarding the possession of commercial driver's licenses from other states as a first degree misdemeanor, however failure to surrender a commercial license is amended to moving violation status.

Section 29 amends s. 322.16(5) and (6), F.S., effective October 1, 2010, violating certain restrictions on driver's licenses are reclassified as moving violations.

Section 30 amends s. 394.4599(2) (a), F.S., to diminish the role of the state attorney in the Baker Act process. In Baker Act proceedings the state attorneys' involvement is largely ministerial. Although some circuits have a policy of assisting the court in administering this process others do not. The state attorney is not statutorily required to do so but rather may have a role in those proceedings.

Section 31 amends s. 394.4615(3), F.S., to diminish the role of the state attorney in the Baker Act process. The state attorney is not statutorily required to do so but rather may have a role in those proceedings.

Section 32 amends s. 394.4655(3) (c), (6) (a), and (7) (a), F.S., to diminish the role of the state attorney in the Baker Act process. The state attorney is no longer statutorily required to do so but rather may have a role in those proceedings.

Section 33 amends s. 394.467(3) and (6) (a), F.S., to diminish the role of the state attorney in the Baker Act process. The state attorney is no longer statutorily required to do so but rather may have a role in those proceedings.

Section 34 amends s. 775.082(9) (d), F.S., to eliminate reporting requirements for the state attorneys for those cases in which the defendant meets the criteria for being sentenced as a "prison releasee reoffender," but does not receive the mandatory minimum sentence. The bill eliminates the requirement for the state attorney to include a sentencing deviation memorandum in the case file and to transmit these memoranda to the Florida Prosecuting Attorneys Association. The state attorneys will continue to retain this information.

Section 35 amends s. 775.083(1), F.S., to direct the deposit of criminal fines imposed when adjudication is withheld to the General Revenue Fund. The imposition of criminal fines was clarified to be mandatory in the 2008 Legislative session for such cases and the fine revenue is currently deposited in the State Courts Revenue Trust Fund for appropriations to the state court system. While the imposition of the fine is mandatory, the judge determines the amount within a range. To avoid the appearance of a conflict of interest in assessing these fines, the bill redirects the revenue to the General Revenue Fund.

Section 36 repeals s. 775.08401, F.S., requiring the state attorney in each judicial circuit to adopt uniform criteria for determining when to pursue habitual felony offender and habitual violent felony offender sanctions. The requirement that any deviation from the criteria must be explained in writing and placed in the case file is also eliminated in the repeal. The state attorneys will continue to retain this information.

Section 37 repeals s. 775.087(5), F.S., to eliminate the requirement that prosecutors write an explanation for each case in which a defendant qualified for the minimum mandatory sentences under the 10-20-Life law, but did not receive the sentence. The bill further eliminates the requirement that the prosecutor retain the memorandum in the defendant's file. The state attorneys will continue to retain this information.

Section 38 amends s. 775.0843(5), F.S., to delete a cross reference to s. 775.08401, F.S., which is repealed in the bill.

Section 39 amends s. 938.06, F.S., to clarify that the $20 court cost for crime stopper programs must be assessed on all criminal convictions and criminal cases when adjudication is withheld.

Section 40 amends s. 939.08, F.S., to allow circuit trial court administrators to designate a court employee to review court bills and approve them for payment. Currently trial court administrators in multi-county circuits must have bills mailed to the central office of the circuit to personally approve them for payment.

Section 41 amends s. 939.185(1) (a), F.S., that allows counties to assess a $65 additional court cost on criminal convictions to be used to fund court improvement projects, legal aid programs, public law libraries, and teen court programs. Under legislation implementing Revision 7 to Article V of the Florida Constitution, these are optional programs that are the funding responsibility of the county. The Legislature provided this optional court cost to assist counties in funding these programs. In some areas, this optional funding may be used to supplant county funding requirements such as providing information technology to the trial courts. The bill requires the chief judge in each circuit to certify court innovations under this section to ensure that such projects are in addition to the county funding responsibilities for facilities, security, and communication services.

Section 42 adds s. 943.03(15), F.S., to require the Department of Law Enforcement to modify the statewide uniform statute table used by local law enforcement and state attorney offices in charging persons accused of committing crimes. Currently, some criminal justice agencies use different statute tables and this creates inefficiencies in the criminal justice system. Differences in statute tables are based on the amount of detail provided, not the accuracy of the criminal statutes in the table. By requiring the Department of Law Enforcement to provide a statute table of sufficient detail for all criminal justice agencies, cost savings can be achieved. These changes are to be implemented by December 31, 2011.

Section 43 amends s. 943.053(3) (b), F.S., to allow the guardian ad litem program to pay the reduced fee ($8 rather than the current fee of $24) to the Department of Law Enforcement for background screening of Florida criminal history information as other state agencies pay.

Section 44 amends s. 943.0585(2), F.S., to remove the state attorney from the process of expunging criminal records. Currently the state attorney certifies that the person has obtained the required information. This is unnecessary because the applicant must get the necessary court documents from the clerk of the court and the Department of Law Enforcement determines if the person qualifies for expungement. The state attorney and statewide prosecutor retain the ability to object to expunction orders entered by the court based upon invalid information, however the duty to collect certified documents falls to the person seeking the expungement.

Section 45 repeals s. 985.557(4), F.S., requiring the state attorney in each judicial circuit develop policies and guidelines for filing juvenile cases in adult court, as well as the requirement that these policies and guidelines be submitted to the Legislature and the Governor no later than January 1 of each year. The state attorneys will continue to maintain this information.

Section 46 directs the unexpended funds in the Operating Trust Fund of the state court system relating to appellate filing fees to be deposited in the State Courts Revenue Trust Fund and that other unexpended funds in the Operating Trust Fund be deposited in the new Administrative Trust Fund within the state court system.

Section 47 provides that unless otherwise expressly provided, the bill has an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The Operating Trust Fund within the state court system is renamed the Administrative Trust Fund.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Various court fees are clarified in the bill.

B. Private Sector Impact:

Private parties paying various court fees clarified in the bill will benefit from a more uniform interpretation of fee amounts.

C. Government Sector Impact:

The clarification of civil indigency fee will result in revenues to fund appropriations already provided to the five regional conflict counsels.

Changes to the indigent for costs program and court appointed counsel provisions will control costs in these programs.

The reduced cost of criminal history background screening afforded in the bill for the Guardian Ad Litem Program will result in cost savings.

Reduced reporting requirements and other administrative efficiencies contained in the bill will positively impact the state court system, the state attorneys, and the public defenders.

The revision of certain traffic penalties from misdemeanors to civil infractions will result in a reduced workload for the state attorneys and the public defenders, and will reduce jail use in Florida counties.

The redirection of the criminal fine revenues from the adjudication withheld cases will result in a loss of $4.5 million annually in the State Courts Revenue Trust Fund and an increase of $4.5 million annually in the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.